

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

EDWARD SMITH,

Plaintiff,

-v-

1:12-CV-33
(DNH/RFT)

ALBANY DISTRICT ATTORNEY'S
OFFICE; DENNIS LEONARD, Albany Police
Officer; and Bruce D. Lennard, A.D.A.,

Defendants.

APPEARANCES:

OF COUNSEL:

EDWARD SMITH
Plaintiff, Pro Se
Albany County Correctional Facility
840 Albany Shaker Road
Albany, NY 12211

DAVID N. HURD
United States District Judge

DECISION and ORDER

Plaintiff brought this civil rights action pursuant to 42 U.S.C. § 1983. On January 20, 2012, the Honorable Randolph F. Treece, United States Magistrate Judge, advised, by Report-Recommendation, that the action be dismissed due to plaintiff's failure to comply with Federal Rules of Civil Procedure 8 and 10. In the alternative, Judge Treece recommended that in light of plaintiff's pro se status, prior to any dismissal, he be afforded an opportunity to amend his complaint consistent with the instructions in the Report-Recommendation. Specifically, Judge Treece recommended that in his amended complaint plaintiff allege

claims of misconduct or wrongdoing against a defendant that he has a legal right to pursue and over which the court has jurisdiction. No objections to the Report-Recommendation were filed.

On February 15, 2012, plaintiff filed an amended complaint, in compliance with the Report-Recommendation which had not yet been reviewed by the undersigned. See Dkt. No. 5. Based upon a careful review of the entire file and the recommendations of the Magistrate Judge, the Report-Recommendation is accepted in whole. See 28 U.S.C. 636(b)(1). However, because plaintiff has already complied with the recommendation that he file an amended complaint, there is no need to order him to do so now.

In light of the brevity of the amended complaint, it has been reviewed. The amended complaint no longer names the Albany Police Department as a defendant, but again asserts claims against Dennis Leonard, an Albany Police Officer. In addition, plaintiff names the Albany County District Attorney's Office and Bruce D. Lennard, Esq., Assistant District Attorney, as defendants. The amended complaint contains dates and locations where the alleged violations occurred, as suggested by the Report-Recommendation, but is devoid of facts to support the alleged violations. Instead, the amended complaint makes conclusory allegations of, inter alia, false arrest, malicious prosecution, illegal arrest, and illegal incarceration which occurred on October 6, 2010, at the Albany County Jail and/or Albany County Judicial Center. It does not specify any actual acts of misconduct or wrongdoing, or any nexus between such misconduct and plaintiff's civil rights.

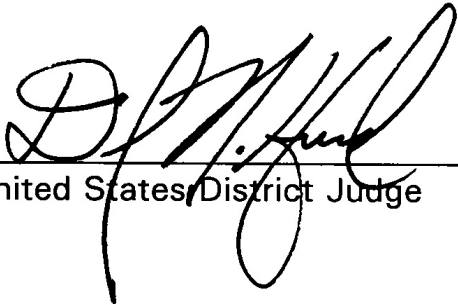
Upon review of plaintiff's amended complaint, it is clear that this new pleading fails to satisfy Federal Rules of Civil Procedure 8 and 10. Accordingly, the amended complaint will be dismissed.

Therefore it is

ORDERED that

1. Plaintiff's amended complaint, Dkt. No. 5, is DISMISSED; and
2. The Clerk shall serve a copy of this Decision and Order on the parties in accordance with this District's Local Rules.

IT IS SO ORDERED.


United States District Judge

Dated: February 23, 2012
Utica, New York.